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School Segregation Suits

The Court Takes More Time

BOTH disappointment and relief greeted the recent announcement of the U. S. Supreme Court that it would put off, at least until next fall, any decision on public school segregation. At its session of June 8, the Court said it wanted to hear more arguments on the question when it reconvenes in October.

What does the delay mean?

Some — including Senator Walter F. George, of Georgia — saw it as evidence that the Court is prepared to outlaw segregation. ("My advice to state authorities," said the Senator, "is to make a long and complete study of the Court's decision before acting on it.") Others expressed disappointment at this further postponement of an already long-deferred decision, and at the "gradualist" tenor of the questions posed by the court for reargument. A third group welcomed the delay as providing more time for public discussion and understanding of the controversial issues involved.

In any event, attempts to anticipate the decision, on the basis of the Court's announcement, are at best only educated guesses. The Justices are obviously divided in their opinions, but in how many ways and in what numbers no one can say. Thus it is impossible to know what proportion of court sentiment is reflected by the various questions.

The first group of questions raised by the court, probe into the history and background of the Fourteenth Amendment, which declares that no state may abridge the privileges and immunities of a citizen, nor deny him equal protection of the laws. The general purpose of the Amendment is, of course, well known. It was adopted after the Civil War to safeguard the rights of the newly emancipated slaves. But, more specifically, the Court asks:

"1. What evidence is there that the Congress which submitted and the state legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in public schools?

"2. If neither the Congress in submitting nor the states in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segrega-

tion in public schools, was it, nevertheless, the understanding of the framers of the Amendment:

"(a) That future Congresses might, in the exercise of their power under Section 5 of the amendment, abolish segregation, or

"(b) That it would be within the judicial power in light of future considerations, to construe the amendment as abolishing such segregation of its own force?"

SUGGESTIVE ARGUMENTS ONLY?

Attorneys for each side must seek answers to these questions that will advance their respective cases, but they can hardly relish the job. Called for is evidence of what was in the minds of the framers and ratifiers of the Amendment, and it is unlikely that anything more than suggestive arguments will be found. The Court apparently has its misgiving about finding conclusive answers, for it asks next:

"3. On the assumption that the answers to questions 2 (a) and (b) do not dispose of the issue, is it within the judicial power, in construing the amendment, to abolish segregation in public schools?"

This is familiar ground, which has been battled over since the school segregation suits were first filed. The plaintiffs, ably represented throughout by the National Association for the Advancement of Colored People, may be expected to repeat that the Supreme Court's own record in recent years demonstrates its power to construe the Fourteenth Amendment as outlawing segregation. Defense attorneys will no doubt continue to maintain that the state legislatures are the proper bodies to determine the racial pattern of education, and that the Supreme Court itself has recognized that fact since 1896, when the "separate put equal" doctrine was propounded. The choice between these two arguments is the fundamental decision the Court must make.

It is not the foregoing questions, however, that have provoked the most discussion. Public attention has been focused mainly on the Court's queries about possible courses of action in the event segregation is held unconstitutional. The Court asked:

"4. Assuming that it is decided that segregation in public schools violates the Fourteenth Amendment:

"(a) Would a decree necessarily follow providing that, within the limits set by normal geographical districting, Negro children should forthwith be admitted to schools of their choice, or:

"(b) May this Court, in the exercise of its equity powers, permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinctions?"

ATTORNEY GENERAL'S PROPOSAL

This preoccupation with gradual modes of enforcement comes as no surprise to those familiar with the brief filed last December by the U. S. Attorney General as a "friend of the court." (See NEW SOUTH, December 1952.) The Attorney General urged the Court, if it should rule against segregation, to provide for a program "to achieve orderly and expeditious transition to a non-segregated system."

The Attorney General's brief said further: "The fact that a system or practice is determined to be unlawful does not of itself require the court to order that it be abandoned forthwith.

A reasonable period of time will obviously be required to permit formulation of new provisions of law govering the administration of schools in areas affected by the Court's decision. School authorities may wish to give pupils a choice of attending one of several schools, a choice now prohibited. Teachers may have to be transferred, and teaching schedules rearranged. . . .

'ORDERLY TRANSITION'

"These are indicative of the kinds of problems which may arise in giving effect to a holding that separate but equal school systems are unconstitutional. We suggest that any relief which this Court may direct should contemplate the possibility of such problems and afford opportunity for their expeditious settlement within a specified period. Moreover, to the extent that there may exist popular opposition in some sections to abolition of racially-segregated school systems, we believe that a program for orderly and progressive transition would tend to lessen such antagonism."

Assuming that the Court decides to order an "effective gradual adjustment" to non-segregation, it asks:

"(a) Should this court formulate detailed decrees in these cases;

"(b) If so, what specific issues should the decrees reach;

"(c) Should this court appoint a special master to hear evidence with a view to recommending specific terms for such decrees;

"(d) Should this court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this court include and what procedures should the courts of first instance follow in arriving at these specific terms of more detailed decrees?"

Again, the roots of these questions are to be found in the brief submitted by the Attorney General for the United States Government. That brief proposed:

"An appropriate tribunal to devise and supervise execution of a (transition) program is a district court, which could fashion particular orders to meet particular needs. On remand, that court could direct the parties to submit proposals for such a program. And if the district court so desires, it could appoint an advisory committee of lawyers and other citizens to assist it in this task. After the district court adopts a program, either side could seek review, by appeal or otherwise, if it believes the program does not conform to this Court's decision. At reasonable intervals after the program is put into effect, the parties should submit progress reports to the district court, which should have the power, if circumstances so require, to enter any further orders found to be necessary. Such a procedure should afford opportunity to responsible school authorities to develop a program most suited to their own conditions and needs. . . ."

ALTERNATIVE PLANS

The other alternatives referred to by the Court may have had their genesis in this footnote to the Attorney General's proposal: "It is assumed that the district courts are, because of their familiarity with local conditions, the appropriate tribunals to deal with issues of relief. It may be, however, that the Court will wish to formulate more precise standards and provisions for the guidance of the district courts. In that event we sug-

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Southern Press Comments On Supreme Court Delay

NORFOLK VIRGINIAN-PILOT

The Supreme Court's call for reargument of the public school segregation cases is first of all the evidence of the importance which the court attaches to these cases and the difficulties it has had in reaching a decision. It is equally, we think, an indication that the court is thinking seriously about a decision that would end segregation. . . .

At no point do questions seem to reflect concern about matters which have stirred governments and people interested primarily in establishing the equality of public schools in order to bolster the prevailing doctrine of separate but equal schools. There is no evidence of a struggle within the court to reach an equitable decision on a basis of the status quo or of a system in which buildings, equipment, salaries, training, and such matters are equalized as nearly as possible. There is *much* evidence on these two ideas:

1. Can we end segregation?
2. What is the wisest method of doing so?

The conclusion is more tenable, therefore, that the Supreme Court, troubled by its duty of construing the 14th Amendment and about the impact of its decision on conditions as they now exist, is in effect giving a warning of the direction of its thinking. Such a warning would gain little time for demonstrating new devotion to equality in separation by those who are dedicated to that principle. It would not give much additional time for the sociological changes visible on every side to extend still further and to help people become more accustomed to them.

But one thing such a warning emphatically does. It gives strong reasons, as we interpret the Supreme Court's admittedly inconclusive baring of its mind, for the Southern States to adjust their own thinking, their own emotions, and their own habits to the seemingly increasing possibility that the end of segregation in public schools is nearer now than ever before.

RALEIGH NEWS AND OBSERVER

. . . Southern states which have ignored the provisions of their own constitutions calling for equality in school facilities cannot hope to continue the discrimination. And those states, including North Carolina, which have already made efforts in good faith to end discrimination must complete the job, either voluntarily or under compulsion. It should be done voluntarily.

If the eventual order of the Supreme Court calls for further action, the State will be in much better position for the transition if, in the meantime, it has complied fully with its own constitution.

GAINESVILLE (GA.) DAILY TIMES

. . . Careful and penetrating, the questions posed by the land's highest court reveal a truly exhaustive search for the truth of the matter and the justice of it. If after judging the answers to these questions the court makes a ruling, we will have confi-

dence in the consciences that produce the ruling.

Not that we need reassuring, far from it. But the court's questions serve to underline a deep and abiding faith that we have in America's primary judicial body. . . .

In [*New South's*] recent issue an educator weighs what we can morally and legally do and what we must do if segregation is abolished. Both answers are the same: we must remain calm and honest and follow the decision as intelligently as we can, as Americans and as freemen. . . . The easiest way is the way which appears the hardest because it demands a complete readjustment of our habits and thinking — and that's true as far as both races are concerned.

But the fateful decision has been put off. It seems at least as distant as late fall of this year, perhaps as distant as early 1954. However, this is one bridge we can start crossing before we get to it as far as our thinking and our tempers are concerned.

ASHEVILLE CITIZEN

Once more the Supreme Court has put off a decision on segregation in the public schools. The party of the first part — the South — in this momentous constitutional issue has gained a little time, but it may well ask itself whether time is any longer of the essence. . . .

As Dr. Guy B. Johnson writes in the May issue of *New South,* legally this is "probably the hottest hot potato that our Supreme Court has ever had to handle." Socially and economically it sizzles with sectional complications. South Carolina and Georgia are prepared to abolish their public school systems if the segregation laws are overthrown. North Carolina sits in a cautious seat wondering whether to go ahead and vote on a $50 million school bond issue. The rest of the South is on tenterhooks. . . .

The next few months may well be months of tenseness pending the long-delayed — and perhaps much longer to be delayed — ruling of the Court. Last January a year ago and again last October a decision was purposefully held in abeyance. Did the Court hope that time might be a solvent? From the practical standpoint, more time only makes for more indecision, since the states cannot proceed under the "separate-but-equal" theory and neither can they proceed on the theory that segregation will be abolished.

From the other viewpoint — the theoretical and the emotional — the time is not given for hot-headedness, for demagoguery, for extremist act and utterance. If a transition is to come, let us hope that it is gradual, for that is the only tempo which would let it come manageably. In the meantime there must be restraint and calm counsel. Society is in flux, and the South with it.

THE CHATTANOOGA TIMES

. . . Stripped of their legalisms, the [Supreme Court's] questions hint at a framework of gradualism within which a decision — if it does require abolition of segregated schools — can be implemented with the least threat to the growing spirit of interracial good will and co-operativeness in the South.

It is by no means certain, of course, that the Court will outlaw segregation. It may sustain a previous decision that "equal but separate" facilities satisfy the constitutional demands for like treatment of citizens by the separate states. However, if that be the outcome, the South can scarcely hope to continue the myth that white

and Negro schools are equal now, even after tremendous strides have been made toward equalization. The delay in the ultimate decision gives the states even more time in which to demonstrate their willingness to bring the two systems into par, but the vast financial burdens of the "equal but separate" policy will have to be assumed in full.

The ability of the American people to accommodate themselves to change and to absorb points of differences, however sharp, in the vast areas in which there is agreement, will stand the nation in good stead in the months to come. The judicious use of power at all levels will aid the process of settling these vital questions of rights and privileges and responsibilities of citizenship.

NORFOLK JOURNAL AND GUIDE

. . . The court seems to have decided what its highest duty is, but is searching for a way to perform this duty and at the same time avoid the possible happening of the earth-shaking consequences pictured to the court by attorneys for the states and by some of the governors.

The postponement undoubtedly reflects the feeling on the part of the court that it has before it for decision the most important social change proposed since the Civil War. Its cautious deliberations and its evident searching for remedies which will cure moral and legal wrongs that have been endured for nearly a century, would indicate, to this writer, that a solution has been agreed upon. If that is true, the court may be pondering the rise of other serious and difficult problems, that in practical effect, would bring the whole question back to the court in different form, as the abolition of the public schools in any state surely would do.

COLUMBIA STATE

. . . Judging by the points raised in the court's announcement, it would seem to us that those who wish to break down the rule of separate, but equal, facilities, must, if their contention is to prevail, give the court more convincing reasons why this long established principle should be abolished, and segregation, per se, declared unconstitutional. It might be said, and no doubt it will be, that it is the other way around; that the court is giving proponents of segregation another opportunity to clarify their position. But this newspaper feels the phrasing of the agenda for the October hearing would indicate rather that the court will not upset the present rule unless it is given more evidence as to why it should do so. At least, by the very act of calling for additional information, the court has said in effect that it has not been convinced by the arguments already made that there should be a change.

GREENSBORO (N.C.) DAILY NEWS

. . . The Supreme Court seems to understand the gravity of the decision now in its hands. It is no easy matter to say "yes" or "no" — and the likelihood is that the court will seek some middle ground moving slowly in the direction of what it apparently sees as the right — the abolition of "second class citizenship" in the United States.

Whatever the court's decision the South, still torn by old frustrations but moving out of poverty and economic maladjustment, must use every bit of good judgment, restraint and cool-headedness at its command. The court realizes the import of its decision. The South must approach that decision with prayerfulness and magnanimity.

Sewanee Trustees Open Doors Of Seminary to Negro Applicants

On June 4, trustees of the University of the South voted overwhelmingly that henceforth applications for admission to the School of Theology should receive "sincere and thorough consideration without regard to race."

This action was the heartening culmination of a year's controversy at the Tennessee institution, best known as Sewanee, which is owned by 22 Southern dioceses of the Protestant Episcopal Church. (See NEW SOUTH, Oct.-Nov. 1952.)

By a vote of 78 to 6, the board of trustees passed the following resolution:

"Whereas the constitution and ordinances of the University of the South do not deny admission of students because of race or color, therefore be it resolved that the board of trustees instruct the vice-chancellor and the authorities charged with admission of students to the School of Theology to give all applications for admission thereto sincere and thorough consideration without regard to race."

Bishop R. Bland Mitchell, chancellor of the university, said of the resolution: "I think the trustees functioned at the high level befitting Sewanee and discharged their solemn duty before God. They deliberated dispassionately and they kept out of discussion the side conflicts which had arisen as a result of the conflict in the faculty and which were not the main issue."

Bishop Edmund P. Dandridge of Tennessee, the new dean of the School of Theology, expressed his gratification at the resolution and the overwhelming majority by which it was passed. "It has opened the doors of the Theology school to men of all races," he declared, "and has done so in a manner that links this action with the history and traditions of Sewanee."

On the day following the trustees' action, the university announced that a Negro Protestant Episcopal minister, the Rev. John M. Moncrief, of Orangeburg, S. C., has applied for admission to the School of Theology's five-week graduate study class beginning on July 29. University authorities declared that the application would be considered "in the same way in which other applications are and in the light of the resolution adopted by the trustees yesterday — 'regardless of race.' "

SRC Police Pamphlet Cited as Professional Aid

SRC's guide to modern police practices, *Race and Law Enforcement,* had its fourth printing last month, after winning praise from a journal of police science.

The latest edition of the police pamphlet brought the total printed to more than 20,000 copies. Almost 18,000 have been ordered and distributed by police officials, church groups, civic organizations, and SRC's Fellowship of the Concerned.

A review in *The Journal of Criminal Law, Criminology and Police*

Science by Robert H. Scott of the Police Administration Department, Michigan State College, has focused new interest on the pamphlet in police circles, North and South.

Mr. Scott wrote of *Race and Law Enforcement*:

"This terse but forceful pamphlet sets forth some clear and pertinent answers to the question of the role of the police in racial problems. It begins with a far sighted and sound analysis of the profession of "policemanship" including attitudes toward all people that lessen tension. Then the basic problems of prejudice are discussed with clarity and understanding. Methods of understanding and preventing prejudice are set forth.

"The role of the Negro policeman is discussed, and some of the excellent experiences in cities employing them are explained. The booklet concludes with a checklist for race and law enforcement in a typical community and a short but important bibliography.

"Although this pamphlet is primarily designed for Southern communities, it could be read and studied with great profit by all municipal police departments throughout the country."

Court Takes More Time

(*Continued from page* 3)

gest that several procedures are available. One would be for the Court to issue no decree at this time, but to set the matter down for argument at a later date on the question of relief. Another would be to appoint a special master to hold hearings and make recommendations to the Court on that question."

The questions posed by the Supreme Court and the suggestions set forth in the Government's brief are reproduced here at length because, together, they furnish important clues to the Court's trend of thought. But it is well to remind ourselves that they are no more than clues — certainly not clear indications of how the Court will rule. Stripped of their legal language, the Court's questions boil down simply to this:

1. Does the Supreme Court have the legal power to rule out school segregation?

2. *If so,* does the Court have the power to order a gradual, rather than an immediate transition to non-segregation?

3. *If so,* how should the transition program be worked out?

Despite all the predictions and speculations, the biggest and most important word is still *if*.

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